UNITED STATES PATENT AND TRADEMARK OFFICE

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ART UNIT	PAPER NUMBER
3688	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/672,537	KASIREDDY, VIJAY G.
	Examiner	Art Unit	
	KHANH H. LE	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07/17/2008</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-37</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-37</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   This Office Action is responsive to the Applicant(s)' Response filed 07/17/2008.
Claims 1-37 are pending with claims 1, 13, 25 and 37 as independent claims.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or
composition of matter, or any new and useful improvement thereof, may obtain a patent
therefor, subject to the conditions and requirements of this title.

3.   **Claims 1-12, 13-24, and 25-37 are rejected under 35 U.S.C. 101 because the
claimed invention is directed to non-statutory subject matter.**

Claim 1:

The claimed invention is directed to non-statutory subject matter.

Claims 1-10 are rejected under 35 U.S.C. 101 because the claims deal with a system
containing software and do not meet any of the statutory items such as process (method),
machine (apparatus), manufacture (product) or composition.

The system claims appear to be apparatus claims in the preambles, however, there are no
structural elements recited as required in apparatus claims. For instance, independent claim 1
recites "an interface", a term that by definition could be software, not a specified device. Further
specification, US PGPub 20050071220 version, at paragraph [0051], leaves open the possibility
that the quote system and the COMS can be just software (e.g. " A DSS 30 <u>may</u> include one or
more computer systems … A COMS 40 <u>may</u> include one or more computer systems" means

these systems may also be just software). Therefore, the claims are directed to nonstatutory subject matter.

Claims 2-12 suffer from similar defects as claim 1.

Claim 25: is directed to non-statutory software per se. To overcome this rejection, the claim should be directed to the computer readable medium on which the program is embodied.

Language formats such as *"An article of manufacture comprising:*
a computer usable medium having computer readable program code means
embodied therein for causing the computer to…(e.g. store in
memory a maximum value of ….), the computer
readable program code means in said article of manufacture comprising: code for… ; code for
…" would be acceptable and thus herein suggested.

Claims 26-36 suffer from similar defects as claim 25.

Claim 13:

The claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least Gottschalk v. Benson, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter.

Here the claim fails to meet the above requirements because the steps are neither tied to

another statutory class of invention (such as a particular apparatus) nor physically transform underlying subject matter (such as an article or materials) to a different state or thing.

Here, the methods are not tied to another statutory category except for the nominal recitation of a "computer-implemented method" in the preamble without any recitation of use of a computer in any of the method steps. Such <u>nominal</u> use of a computer (or recitation of a computer only in the preamble) does not pass muster under present understanding of 35 U.S.C. 101. See similar analysis in Ex Parte Langemyr, USPTO Board of Appeals and Interferences, Appeals 2008-1495 (Informative Opinion) http://www.uspto.gov/web/offices/dcom/bpai/its/fd081495.pdf (rationale at page 20) (bold emphasis added):

"While Appellants' claim encompasses a "particular machine" embodiment for creating a mathematical expression of a combined physical system, the claim is not limited to such an embodiment. Appellants' claimed method steps, as recited in the body of claim 1, are not limited to process steps using particular structure or apparatus. To the contrary, looking only to the method steps recited in the body of claim 1, they would reasonably be interpreted to encompass a human being performing these steps. **The Appellants' claim 1 preamble includes only a nominal recitation of a "computer apparatus." Nominal recitations of structure in an otherwise ineligible method fail to make the method a statutory process.** *See Benson,409 U.S. at 71-72.* **As Comiskey recognized, "the mere use of the machine to collect data necessary for application of the mental process may not make the claim patentable subject matter."** *Comiskey, 499 F.3d at 1380 (citing In re Grams, 888 F.2d 835, 839-40 (Fed. Cir. 1989)).* **Incidental physical limitations, such as data gathering, field of use limitations, and post-solution activity are not enough to convert an abstract idea into a statutory process.** *In other words, nominal or token recitations of structure in a method claim do not convert an otherwise ineligible claim into an eligible one. To permit such a practice would exalt form over substance and permit claim drafters to file the sort of process claims not contemplated by the case law. Cf., Flook,437 U.S. at 593 (rejecting the respondent's assumption that "if a process application implements a principle in some specific fashion, it automatically falls within the patentable*

subject matter of [Section] 101," because allowing such a result "would make the determination of patentable subject matter depend simply on the draftsman's art and would ill serve the principles underlying the prohibition against patents for 'ideas' or phenomena of nature.").

In this case, we decline to allow clever claim drafting to circumvent the principles underlying the Supreme Court's interpretation for "process." The only recitation of structure is in the nominal recitation in the preamble citing a "method executed in a computer apparatus." This recitation is so generic as to encompass any computing system, such that anyone who performed this method in practice would fall within the scope of these claims. Thus, the recitation of a computer apparatus in the preamble is not, in fact, a limitation at all to the scope of the claim, and the claim is directed, in essence, to the method performed by any means.

As such, we fail to find that this recitation alone requires the claimed method to include a particular machine such that the method qualifies as a "process" under Section 101. We will not allow such a nominal recitation in the preamble to convert an otherwise ineligible claim into an eligible one."

To overcome this rejection, the Examiner suggests adding "by a computer" immediately after at least one, <u>and preferably several</u> of the main method steps, e.g. for claim 1: *" receiving by a computer"; " determining by a computer"; " communicating by a computer an order…"*

Claims 14-24 suffer from similar defects as claim 13.

Claim 37: claims a system claim in the preamble yet seems to be a method claim by reciting steps with no recited structural elements. If it is a system claim, it is rejected under this section on the same reasoning as claim 1 above. If is a method claim, it is rejected under this section on the same reasoning as claim 13 above.

Claim Rejections - 35 USC § 112

4.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and
distinctly claiming the subject matter which the applicant regards as his invention.

5.   **Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being
indefinite for failing to particularly point out and distinctly claim the subject matter which
applicant regards as the invention.**

Claim 37 is a system claim yet no structural elements or structural cooperative
relationships are recited. Thus it is not clear which structural elements allow performing the
claimed method steps. As stated above under section 101 analysis, it appears claim 37 may be a
method claim. It is interpreted as such. Appropriate correction is required to properly claim a
system or to delete "system" in the preamble to make it a method claim.

6. The previous rejections of claims 1-36 under this section in the last Office Action are
withdrawn following corrections of these claims.

Response to Arguments

7.   Applicant's arguments filed 07/17/2008 have been fully considered but they are
not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness
is based upon improper hindsight reasoning, it must be recognized that any judgment on
obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so
long as it takes into account only knowledge which was within the level of ordinary skill at the
time the claimed invention was made, and does not include knowledge gleaned only from the
applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392,
170 USPQ 209 (CCPA 1971). In this case, obviousness is established by combining or

modifying the teachings of the prior art (Franco) to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves (Franco) or in the knowledge generally available to one of ordinary skill in the art (Franco and Official Notice).

It is also noted Applicants only stated that they disagree and do not clearly point out <u>how</u> the invention overcomes the state of the art disclosed by Franco in view of the Official Notice. It is noted Franco is not discussed at all.

The traversal of the Official Notice is not adequate. To adequately traverse an Official Notice finding, an applicant <u>must specifically point out</u> the supposed errors in the examiner's action, which would include stating <u>why</u> the noticed fact is not considered to be common knowledge or well-known in the art. See MPEP 2144.03(C). Here, the Official Notice taken was that it is well known for vendors to charge fees or penalties or liquidated damages for cancellation of order to protect vendors from breach of contract by buyers. Usually a deposit or initial payment would be such liquidated damages. An example is loss of deposit in cancellation of buying a house or cancellation of a custom product e.g. a car.

Applicants argue such Official Notice is not capable of instant and unquestionable demonstration as being well-known. However, Applicants did not <u>specifically point out</u> the supposed errors in the examiner's action, which would include stating <u>why</u> the noticed fact or facts are not considered to be common knowledge or well-known in the art. That is Applicants did not point out whether it is the legal concept of liquidated damages in contracts that Applicants argue is not well-known, or the application to sales contracts involving vendors and buyers, or the example given by the Examiner. As such the challenge to the Official Notice is not adequate and the common knowledge or well-known in the art statement is taken to be admitted prior art. See MPEP 2144.03 (C). Because the challenge is inadequate, the Examiner also does not have to support the finding with adequate evidence.

The Examiner provides nevertheless, as support for the Official Notice, the definition of liquidated damages (clause) by *Investopedia.com*. Investopedia Inc. 07 Oct.

2008.<Dictionary.com http://dictionary.reference.com/browse/liquidated damages>. i.e. a

provision present in certain legal contracts, that allows for the payment of a specified sum should

one of the parties be in breach of contract. As to application of this clause in real estate or sales

of goods or services, Walker US 5794207 A, is another support for the Official Notice: Walker

relates to contracts for sale of goods or services (including car sales and real estate, see col. 2

lines 34-38) in which liquidated damages can be made part of the contracts (col. 30 lines 47-

52).

As to the argued level of skill in the art, it can be found in the references, i.e. Franco and

the Official Notice. The motivation for 103 is given and adequate: to protect vendors. This

motivation statement can be seen as satisfying the teaching, suggestion, or motivation (TSM) test

or rationale G in the KSR Guidelines cited by Applicants. Other rationales may apply however

the Examiner asserts that the motivation as previously and currently stated is adequate for a

prima facie case of obviousness.

Remarks: The Examiner acknowledges the deleted claim language. The nomenclature

used below however is still relevant for prior art application purposes. Where appropriate please

ignore the superfluous claim language used below, as they should be deleted to correspond to the

now deleted claim language. As the deleted claim language is mostly statements of purpose or

effect, or redundant language to which little patentable weight can be given, the Examiner

believes the previous prior art rejections are still appropriate, therefore they are sustained below.

The Examiner thanks the Applicants for pointing out that claim 37 was not addressed. It

was an oversight, as system claim 37 parallels independent system claim 1 in broader terms thus

would have been rejected on the same basis as claim 1.

Nomenclature and interpretation

8.   For brevity, the following nomenclature (matching the claims language) is used:

DE : "Downstream supply chain entity"

UE: "Upstream supply chain entity"

PI= "particular incentive"

PFD= "particular future date" (for delivery to the customer) or "a future date rather than the current date in exchange for an incentive"

SCD = "a supply channel delay between the DE and an UE" "that represents a time that must elapse before a product in inventory of the UE can be made available to a consumer associated with the downstream supply chain entity") (i.e. usually simply called a "lead time").

OLT: (customer) "order lead time" ("the OLT for the product representing a time difference between a PFD and the current date, the OLT being longer than SCD").

Claim Rejections - 35 USC § 102

9.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the

reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA
35 U.S.C. 102(e)).

**10.   Claims 1- 11, 13-23, 25-35, and 37 are rejected under 35 U.S.C. 102(e) as
being anticipated by Franco US 7257552.**

Claims 1, 13, 25, 37 and 2, 14, 26:

Franco discloses consumer products distribution system, customer interface to place
orders, customer specifying delivery schedule for "predictive purchasing ", collaboration
system along supply chain to reduce costs to involved including consumers (e.g. abstract, Fig 1,
28A and associated text; excerpts below). <u>Consumers are given incentive discounts to promote
the use of Predictive Purchasing, which significantly improves supply chain productivity </u>(e.g.
abstract, Fig 28A and associated text; excerpts below; especially col. 52 lines 26-67).

Franco further discloses at least the following system and software:

Description Paragraph - DETX (119):
   *Each Inventory Provider 130 can communicate with the following: (1) The VIMS
200 to fill consumer orders from its Inventory Site 112 or to obtain
consumption statistics and forecasts, Virtual Inventory status, and real-time
data on consumer orders. (2) The OIMS 111 of a Retailer 110 to negotiate
product supplies, optimize product distribution, minimize total <u>inventory, and
reduce distribution cost</u> and time. (3) Each Inventory Site 112 to which it
supplies products for the matters related to product deliveries. (4) The PTSS
300 for deliveries or pickups, and time updates for pending deliveries or
pickups.*

Relevant excerpts follow:

Abstract Text - ABTX (1):

A real-time transaction processing Consumer Products Distribution System (PDMS) reduces distribution costs, facilitates the distribution of products to consumers and makes online shopping practical. The PDMS integrates Collaborative Inventory Sharing, Order Aggregation, Consumer Predictive Purchasing, Product Transport Support Service, Display Shops, Uniform Consumer Preference Codes, Integrated Virtual Technical Support Centers, and other convenient features. Consumers purchase products through web sites of local and remotely located retailers preferably using Predictive Purchasing. The items purchased from multiple retailers are aggregated at a consumer selected Order Aggregation Site (OAS) based upon a consumer specified schedule. The consumer can pick up the aggregated orders at the selected OAS or have the aggregated orders delivered to a residence. Commercial carriers process consumer parcels at OASs where they are combined with Aggregated Orders for pickup or delivery. Consumers are given incentive discounts to promote the use of Predictive Purchasing, which significantly improves supply chain productivity.

Brief Summary Text - BSTX (2):

This invention relates generally to a method and system for improving the efficiency and reducing the cost of distributing and selling products to consumers. More particularly, the invention relates to Internet based methods and systems for Just-In-Time product distribution, inventory sharing, order aggregation, consumer predictive purchasing, and other conveniences and benefits that provide incentives for consumers to shop online.

Brief Summary Text - BSTX (14):

One aspect of the invention relates to Consumer Predictive Purchasing. In the current product distribution space, vast amounts of extremely valuable predictive consumption data stored in the minds of individual consumers are

lost every day to the detriment of the supply chain and the economy. This

aspect provides a system and method to collect and store, in real-time,

predictive consumer consumption data. The use of this data in supply chain

planning and forecasting can significantly contribute to <u>*major cost reductions*</u>

<u>*in product manufacturing and distribution.*</u> ***In one embodiment of this***

invention, consumers are offered incentive discounts to use the infrastructure

provided by the PDMS for predicting their consumption needs at a future date

and placing Predictive Purchase orders scheduled for future delivery to fulfill

the predicted needs. <u>***The incentive discounts can be determined by appropriate***</u>

<u>***algorithms designed to ensure extensive consumer participation.***</u> ***This aspect is***

discussed in Sections, II.A.7 and VIII of the Detailed Description of the

Invention.

Brief Summary Text - BSTX (25):

   One specific object of this invention is to provide a system and method for

coordinating the operation of the Collaborative Inventory Sharing aspect. This

system and method gives each participating merchant the opportunity to minimize

<u>*inventory and costs*</u> *while offering a broader selection of products and better*

service to consumers. This system and method also offers retailers the

opportunity to broaden their customer base, negotiate better terms and prices

for their product acquisitions, balance and reduce <u>*inventories, and eliminate*</u>

<u>*unnecessary product transportation costs*</u>*.*

Brief Summary Text - BSTX (27):

   Another specific object of this invention is to provide a system and method

for coordinating Consumer <u>*Predictive Purchasing*</u>***.*** ***This system relies upon***

incentive discounts to encourage consumers to use Predictive Purchase Orders.

Brief Summary Text - BSTX (39):

   All participants in the distribution chain, such as manufacturers,

***wholesalers, distributors, retailers, and consumers can derive benefits from
this invention.*** *Manufacturers can obtain accurate real-time data upon which to
base production plans. Using a Just-In-Time business model, wholesalers,
distributors, and retailers can operate efficiently, with reduced* <u>*inventories,
product costs,*</u> *shipping costs, and shipping times.* **<u>Retailers can ensure that
no sales are lost due to lack of inventory</u>** *and can better serve their customers
with broader product selections. At the end of the distribution chain,
consumers can shop comfortably from home, buy products at more competitive
prices, receive their purchases more quickly, and have little or no need to
drive for shopping.*

Brief Summary Text - BSTX (48):

   *A. The Virtual Inventory Management System 1. Maintaining Real-Time
Inventory Data 2. Virtual Inventory Database Module 3. Management of Product
and Financial Transactions 4. Preservation of Privacy 5. Product Search
Mechanism 6. Order Aggregation 7. Consumer* <u>*Predictive Purchasing*</u> *8. Uniform
Consumer Preference Codes 9. Integrated Technical Support Centers 10.
Distributed Exhibition system 11. Product Returning 12. Shipping and
Receiving Through Order Aggregation Sites 13. Architecture Scalability 14.
Communication Links*

Brief Summary Text - BSTX (69):

   VIII. Consumer <u>*Predictive Purchasing*</u>

Brief Summary Text - BSTX (70):

   A. Consumer <u>*Predictive Purchasing*</u> *Process*

Description Paragraph - DETX (79):

   7. Consumer <u>*Predictive Purchasing*</u>

Description Paragraph - DETX (80):

The VIMS 200 *preferably manages and coordinates the operation of specialized application programs that support Consumer* <u>Predictive Purchasing</u>. *One of these programs helps consumers predict and plan their household consumption.* ***Another*** ***computes incentive price discounts.*** ***Using the infrastructure provided by the*** ***PDMS 100,*** <u>***consumers can obtain significant price discounts on Predictive***</u> <u>***Purchase orders scheduled for delivery at some future time determined by the***</u> <u>***consumer's prediction.***</u> *The consumer ordering data can be collected and processed by the PDMS 100 in* ***real-time to generate consumption reports that are*** ***available to the affected participants in the product distribution path, from*** ***the manufacturers that produce the products to the retailers that receive the*** ***purchase orders.*** *This information gives the manufacturers the opportunity to generate accurate production forecasts and manufacturing schedules and provides the necessary infrastructure for the entire product distribution chain to approach a Just-In-Time operating model.*

Description Paragraph - DETX (374):

VIII. *CONSUMER* <u>*PREDICTIVE PURCHASING*</u>

Description Paragraph - DETX (375):

Consumer <u>*Predictive Purchasing*</u> *was introduced in the "Summary of the Invention" as one aspect that is preferably included in the Product Distribution Management System (PDMS) 100 and a brief description of its operation was provided in Section II.A.7. This Section describes, with reference to FIG. 28A, a preferred process for the operation of the Consumer* <u>*Predictive Purchasing*</u> *system. In addition, this Section describes, with reference to FIGS. 28B and 28C, a preferred system and method, called Consumption Cruise Control (CCC), for smoothing undesirable fluctuations in consumption.*

Description Paragraph - DETX (376):

  A. Consumer Predictive Purchasing Process

Description Paragraph - DETX (377):

  The VIMS 200 can provide a system and method, based upon Consumer Predictive Purchasing, to collect and store in real-time the vast amounts of extremely valuable predictive consumption data normally stored in the minds of individual consumers. This consumption data is otherwise lost and serves no useful purpose.

Description Paragraph - DETX (379) and (380): (col. 52 lines 26-67).

  To support Predictive Purchasing, the VIMS can provide specialized application programs that estimate supply chain cost savings resulting from Predictive Purchasing and correlate such savings with the Predictive Purchase Delay (PPD). As used herein, Predictive Purchase Delay (PPD) is the time span between the time the consumer places a Predictive Purchase order and the time the consumer agrees to take possession of the goods purchased. The specialized application programs also correlate the PPD to the incentive price discounts offered to consumers to enable retailers to tailor incentive discounts to the markets they serve and the business models they use. In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are.

  The use of Predictive Purchasing can bring major economic benefits to the entire supply chain, some of which can be passed to consumers in terms of incentive price discounts. *For purposes of illustration, assume that based upon historical consumption records maintained by the VIMS 200 on the behalf of a specific consumer, Predictive Purchase orders for milk can be placed by that consumer with a PPD of 10 days.* **When the consumer places a Predictive Purchase**

order, preferably the ordering information becomes available in real-time to all the participants in the supply chain, from the dairy that processes the milk to the retailer that receives the order. Once a significant percentage of consumers adopt *Predictive Purchasing*, the dairy can accurately plan and schedule production and significantly improve productivity. **Likewise, the distribution system can operate efficiently with Just-In-Time scheduling. Milk containers can be shipped from the dairy to regional distribution centers and within a few hours be transported by the PTSS 300 to each designated OAS 400 Just-In-Time to meet Order Aggregation schedules. Accordingly, the dairy-to-consumer distribution time and the total inventory of milk in the distribution pipeline can both be reduced to a minimum. In addition, the costs otherwise experienced by Retailers 110 for keeping milk in inventory in expensive shelf space, and other costs associated with handling, spoilage, and overhead can be eliminated. In general, similar productivity improvements for both perishable and non-perishable products can be achieved at most stages of the supply chain.**

Thus Franco discloses at the citations and excerpts above all of claims 1, 13, 25, 37 and 2, 14, 26:

1. A computer-implemented system for distributing consumer demand upstream in a supply chain, the supply chain comprising a DE and one or more UE's

(each UE being associated with a SCD)

the system being associated with the DE and comprising:

an interface operable to:

receive, at a current time, an indication of consumer demand for a product that a consumer may be willing to receive at PFD ;

and communicate the indication of consumer demand for the product (the consumer may be willing to receive at PFD);

a quote system coupled to the interface, the quote system operable to:

receive, from the interface, the current indication of consumer demand for the product the consumer may be willing to receive at PFD;

determine a PI based on an OLT for the product,

(the OLT for the product representing a time difference between a PFD and the current date, the OLT being longer than SCD),

the PI reflecting cost savings to the DE associated with the OLT;

and communicate the PI to the interface;

the interface operable to:

receive the PI from the quote system;

and convey the PI to allow the consumer to choose

(whether to receive the product at the PFD rather than the current date in exchange for the PI);

and a consumer order management system (COMS) operable to:

if the consumer chooses to receive the product at the PFD (rather than the current date in exchange for the PI),

communicate an order for the product to the UE

(to allow the consumer to receive the product at the PFD from current inventory of the UE rather than from current inventory of the DE in exchange for the PI),

(the **cost savings** to the DE associated with the OLT and reflected in the PI comprising cost savings associated with the consumer receiving the product at the PFD from current inventory of the UE rather than from current inventory of the DE).

wherein the PI comprises a price discount on the product.

(NOTE: though disclosed by Franco, the "to allow.." and "the cost savings…comprising…." limitations, (if any not deleted) are also interpreted as statements of purpose or effect (or natural consequence of the previous steps) only, thus do not need to be given patentable weight. This applies to all claims below having similar limitations).

Claims 3, 15, 27:

FRANCO discloses the system, method and software of claims 1, 13, 25 and further discloses wherein the quote system is a first quote system and operable to: collaborate with a second quote system associated with the UE to determine a cost at the UE associated with the consumer receiving the product from the current inventory of the UE

Further Franco (at e.g. col. 52 lines 26-67) discloses savings are obtained at each step along the supply chain and are passed onto consumers as discounts thus discloses:

"determine a profit increase on the product at the DE based on:

the cost at the UE associated with supplying the product from the current inventory of the UE;

and the cost savings to the DE associated with the OLT ;

and determine the PI based on the **profit increase"**.

Claims 4, 16, 28:

FRANCO discloses the system, method and software of claims 1, 13, 25 and further discloses

wherein the quote system is a first quote system and operable to collaborate with a second quote system associated with the UE to determine the PI based on one or more business rules associated with one or more of the DE's and UE's (implied in citations or excerpts above).

Claims 5, 17, 29:

Claims 5 amounts to giving a larger incentive for a longer delivery delay time based on better achieved savings. Franco, reads on such at *(col. 52 lines 26-67)*.

To support Predictive Purchasing, the VIMS can provide specialized application programs that estimate supply chain cost savings resulting from Predictive Purchasing and <u>correlate such savings with the Predictive Purchase Delay (PPD). As used herein, Predictive Purchase Delay (PPD) is the time span between the time the consumer places a Predictive Purchase order and the time the consumer agrees to take possession of the goods purchased</u>. The specialized application programs also correlate the PPD to the incentive price discounts offered to consumers to enable retailers to tailor incentive discounts to the markets they serve and the business models they use. <u>In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are.</u>

Thus FRANCO discloses the system, method and software of claims 1, 13, 25 and further discloses:

wherein: the PFD is a first PFD , the PI is a first PI , the UE is a first UE, and the OLT is a first OLT;

the quote system is further operable to:

determine a second PI based on a second OLT for the product,

(the second OLT for the product representing a time difference between a second PFD and the current date, the second OLT being longer than a second supply channel delay between the DE and a second UE) ,

(the second PI reflecting collective cost savings to the DE and the first UE associated with the second OLT);

and communicate the second PI to the interface;

the interface is further operable to: receive the second PI from the quote system;

and convey the second PI to allow the consumer to choose whether to receive the product at the second PFD rather than the current date in exchange for the second PI;

and the COMS is further operable to,

if the consumer chooses to receive the product at the second PFD rather than the current date in exchange for the second PI ,

communicate an order for the product to the second UE

(to allow the consumer to receive the product at the second PFD from current inventory of the second UE rather than from current inventory of the DE in exchange for the second PI),

(the collective cost savings to the DE and the first UE associated with the second OLT and reflected in the second PI comprising collective cost savings associated with the consumer receiving the product at the second PFD from current inventory of the second UE rather than from current inventory of the DE or the first UE),

the second PI being larger than the first PI.

Claims 6, 18, 30:

FRANCO discloses the system, method and software of claims 5, 17, 28 and further implicitly discloses (at e.g. col. 52 lines 26-67: *" the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are. "):*

wherein the interface is operable to convey the first and second PI s to allow the consumer to choose whether to receive the product at the first PFD or the second PFD rather than the current date in exchange for the first PI or the second PI.

Claims 7, 19, 31:

Claims 7, 19, 31 parallel claims 3, 15, 27 as to the second UE.

As discussed above, Franco at col. 52 lines 26-67: " the longer the PPD is, the larger the achievable supply chain cost savings and the *incentive price discounts are and other citations about sharing savings realized through the supply chain,* reads on claims 7, 19, 31:

Thus FRANCO discloses the system, method and software of claims 5, 17, 28 and further discloses:

wherein the quote system is a first quote system and operable to: collaborate with a second quote system associated with the second UE to

determine a cost at the second UE associated with the consumer receiving the product from the current inventory of the second UE;

determine a profit increase on the product at the DE based on:

the cost at the second UE associated with supplying the product from the current inventory of the second UE ;

and the cost savings to the DE associated with the second OLT ;

and determine the second PI based on the profit increase.

Claims 8, 20, 32:

Claims 8, 20, 32 parallels claims 4, 16, 28 as to the second UE.

As discussed above Franco at col. 52 lines 26-67: " the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are" and other citations about sharing savings realized through the supply chain, reads on claims 8, 20, 32.

Thus FRANCO discloses the system, method and software of claims 5, 17, 28 and further discloses:
wherein the quote system is a first quote system and operable to collaborate with one or both of a second quote system associated with the first UE and with a third quote system

associated with the second UE to determine the second PI based on one or more business rules associated with one or more of the downstream and first and second upstream supply chain entities.

Claims 9, 21, 33:

As with claims 5, 17, 28 above, Franco, in the citations above, reads on repeating the same method of claim 1 further up the chain supply chain, involving more UE's and reflecting more savings with more UE's t be passed on to customers, which reads on claims **9, 21, 33**.

Thus FRANCO discloses the system, method and software of claims 5, 17, 28 and further discloses

wherein: the quote system is further operable to:

determine a third PI based on a third OLT for the product,

(the third OLT for the product representing a time difference between a third PFD and the current date, the third OLT being longer than a third supply channel delay between the DE and a third UE),

the third PI reflecting collective cost savings to the DE and the second UE associated with the third OLT;

and communicate the third PI to the interface; the interface is further operable to: receive the third PI from the quote system; and convey the third PI to allow the consumer to choose whether to receive the product at the third PFD rather than the current date in exchange for the third PI ;

and the COMS is further operable to, if the consumer chooses to receive the product at the third

PFD rather than the current date in exchange for the third PI , communicate an order for the

product to the third UE

 (to allow the consumer to receive the product at the third PFD from current inventory of the

third UE rather than from current inventory of the DE in exchange for the third PI) ,

the collective cost savings to the DE and the second UE associated with the third OLT and

reflected in the third PI comprising collective cost savings associated with the consumer

receiving the product at the third PFD from current inventory of the third UE rather than from

current inventory of the downstream supply chain entity, the first UE , or the second UE ,

the third PI being larger than the first PI and the second PI .

Claims 10, 22, 34:

FRANCO discloses the system, method and software of claims 1, 13, 25 and further

discloses wherein the consumer choosing to receive the product at the future date rather than the

current date in exchange for the PI comprises one of: the consumer purchasing the product at the

current date; the consumer committing at the current date to purchase the product at the PFD ;

and the consumer indicating an intention at the current date to purchase the product at the PFD

(citations above).

Claims 11, 23, 35:

FRANCO discloses the system, method and software of claims 1, 13, 25 and further

discloses:

wherein the consumer receiving the product at the PFD comprises one of: the consumer

visiting the DE at the PFD to pick up the product; the DE delivering the product to the consumer

at the PFD and the UE delivering the product to the consumer at the PFD (e.g. abstract).

Claim Rejections - 35 USC § 103

11.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12.   **Claims 12, 24, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franco as applied to claims 1, 13, 25 above, and further in view of Official Notice.**
Claims 12, 24, 36:
 FRANCO discloses the system, method and software of claims 1, 13, 25 and discloses extensively about product returns and authorization of such but does not disclose explicitly

wherein, if the consumer chooses to receive the product at the PFD rather than the current date in exchange for the PI , the consumer makes an initial payment to the retailer at the current date based on one or more costs to the DE associated with cancellation of the order.

However, Official Notice is taken that it is well known for vendors to charge fees or penalties or liquidated damages for cancellation of order to protect vendors from breach of contract by buyers. Usually a deposit or initial payment would be such liquidated damages. An example is loss of deposit in cancellation of buying a house or cancellation of a custom product e.g. a car. Thus it would have been obvious to a PHOSITA to add such customary practice to the system of Franco to protect vendors.

The references given above in support for the Official Notice, and the responses to arguments in paragraph 7 above are hereby made an integral part of this rejection.

Conclusion

13.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The Examiner works a part-time schedule and can normally be reached on Tuesday-Wednesday 9:00-6:00.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Khanh H. Le/

Examiner, Art Unit 3688

October 14, 2008